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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

BERNABE RAMIREZ CABRERA,

Defendant and Appellant.

2d Crim. B270199
(Super. Ct. No. KA109570)
(Los Angeles County)

Bernabe Ramirez Cabrera appeals an order denying his petition for writ of habeas corpus seeking relief under Proposition 47, the Safe Neighborhoods and Schools Act (Pen. Code, § 1170.18, subd. (b)).¹ Appellant requested that the trial court recall his sentence and reduce his 2015 felony conviction

¹ Because an order denying a petition for a writ of habeas corpus is not reviewable on appeal (*In re Clark* (1993) 5 Cal.4th 750, 767, fn. 7; *People v. Gallardo* (2000) 77 Cal.App.4th 971, 983; *People v. Garrett* (1998) 67 Cal.App.4th 1419, 1421-1422), we treat the appeal as an appeal from a petition to recall appellant's sentence and reduce his commitment offense to a misdemeanor.

for possession of a controlled substance (Health & Saf. Code, § 11377) to a misdemeanor.

We appointed counsel to represent appellant in this appeal. After an examination of the record, counsel filed an opening brief requesting that the court make an independent review under *People v. Wende* (1979) 25 Cal.3d 436.²

We subsequently advised appellant that he had 30 days within which to personally submit any contentions or issues that he wished us to consider. Appellant responded by filing an eight-page handwritten supplemental brief with attachments.

The record indicates that the trial court found appellant ineligible for Proposition 47 relief because he is required to register as a sex offender under Penal Code section 290 in case No. VA077569. Section 1170.18, subdivision (i) provides that a defendant may not petition for Proposition 47 relief if he or she committed “an offense requiring registration pursuant to subdivision (c) of section 290” as a sex offender. (*People v. Shabazz* (2015) 237 Cal.App.4th 303, 314.)

Appellant’s supplemental brief does not dispute that he is required to register as a sex offender. Instead, he raises claims of ineffective assistance of trial and appellate counsel and imposition of an unauthorized sentence. Among other things, he contends that he did “not knowingly and intelligently waive his constitutional rights before pleading guilty” to the commitment offense.

² We assume for purposes of this opinion that the protections afforded by the *Wende* decision apply to an appeal from an order denying a petition brought pursuant to Proposition 47.

The record before us is limited to the trial court's denial of the Proposition 47 petition. This limited record fails to support the claims raised by appellant in his supplemental brief. Moreover, the supplemental brief can only be read as presenting a challenge to the validity of the commitment judgment. ““It is settled that the right of appeal is statutory and that a judgment or order is not appealable unless expressly made so by statute.” [Citations.]” (*People v. Mena* (2012) 54 Cal.4th 146, 152.) Appeal of the order denying relief sought pursuant to Proposition 47 is authorized by subdivision (b) of section 1237, as an order made after judgment, affecting the substantial rights of the defendant. However, that statutorily conferred appellate jurisdiction is limited to review of the decision to deny relief under Proposition 47. To convert that limited grant of jurisdiction to effectuate appellate review of the commitment judgment would in substance allow a belated motion to vacate that judgment, thereby violating the proscription on “bypass[ing] or duplicat[ing] appeal from the judgment itself. [Citation.]” (*People v. Totari* (2002) 28 Cal.4th 876, 882.) Appellant's challenge to the commitment judgment is not cognizable on this appeal of the order denying relief sought pursuant to Proposition 47.

We have reviewed the entire record and are satisfied that appellant's counsel has fully complied with her responsibilities and that no arguable issue exists. (*People v. Wende, supra*, 25 Cal.3d at p. 443; *People v. Kelly* (2006) 40 Cal.4th 106, 126.)

The judgment (order denying petition to recall sentence) is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

YEGAN, Acting P. J.

TANGEMAN, J.

Steven D. Blades, Judge
Superior Court County of Los Angeles

Patricia S. Lai, under appointment by the Court of
Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.